Lim Cheng Chuan Realty Co Sdn Bhd v Kerajaan Negeri Pulau Pinang

HIGH COURT (PULAU PINANG) — SUIT NO 24–352 OF 1999
JEFFREY TAN J
21 OCTOBER 1999

Land Law *— Acquisition of land — Application for declaration to nullify acquisition — Whether remedy of declaration available — Whether delay in challenging acquisition — Land Acquisition Act 1960 s 68*

The defendant published a declaration under s 8 of the Land Acquisition Act 1960 ('the Act') in the Gazette on 27 March 1997 that the lands belonging to the plaintiff were to be acquired. Subsequently, an inquiry and an award were made and the land administrator took formal possession of the lands on 18 October 1997. The plaintiff then sought for a declaration that the acquisition was null and void, because they claimed that the provisions of s 4 of the Act were not observed. The defendant claimed that s 4 was not mandatory and they raised a preliminary objection that s 68 of the Act barred the plaintiff's action as the effect of it would be to set aside the award. They also contended that the defendant's proper remedy was by certiorari.

Held, striking off the summons with cost:

(1) A landowner affected by acquisition proceedings must not delay in approaching the courts, or else courts could be asked not just to invalidate the acquisition but also to undo, in effect, subsequent disposal or use of the land, or dealing with the land. On the facts, the delay was from the plaintiff who took about 18 months from the date of formal possession, if that was to be reckoned as the conclusion of the acquisition proceedings, or about two years from the date of the s 8 notification to file the originating summons for a declaration. Further, the plaintiff had not attempted even to justify or explain the delay (see pp 678D, 677F–G).

(2) If an action for a declaration could be brought to challenge the acquisition procedure, that would mean that the acquiring authority, before it could use the land acquired, would have to sit out the statute of limitations. This could not have been the intention of the Act. As such, a challenge to the acquisition procedure must be made 'as soon as possible', and certiorari was the only proper procedure to do so (see p 679A–B).

[Bahasa Malaysia summary

Defendan telah mewartakan suatu deklarasi di bawah s 8 Akta Pengambilan Tanah 1960 (' Akta itu') di dalam warta pada 27 Mac 1997 bahawa tanah-tanah kepunyaan plaintif akan diperolehi. Selepas

itu, satu siasatan dan satu award telah dibuat dan pentadbir tanah itu telah mengambil milikan formal tanah-tanah itu pada 18 Oktober 1997. Plaintif kemudiannya telah memohon satu deklarasi bahawa rampasan tersebut adalah batal dan tak sah, kerana mereka mendakwa bahawa peruntukan s 4 Akta itu tidak dipatuhi. Defendan menuntut bahawa s 4 tidak mandatori dan mereka telah mengemukakan satu bantahan permulaan bahawa s 68 Akta itu menghalang tindakan plaintif kerana akibatnya adalah untuk mengetepikan award tersebut. Mereka juga menegaskan bahawa remedi defendan yang betul adalah melalui certiorari.

Diputuskan, membatalkan saman tersebut dengan kos:

(1) Seorang pemilik tanah yang terjejas oleh prosiding pengambilan mestilah tidak lewat untuk menghadap mahkamah, jika tidak mahkamah mungkin diminta bukan sahaja untuk membatalkan pengambilan tersebut tetapi juga untuk membatalkan, akibatnya, pelupusan dan penggunaan tanah selepas itu, atau urusan dengan tanah tersebut. Berdasarkan fakta-fakta, kelewatan itu adalah berpunca daripada plaintif yang mengambil masa lebih kurang 18 bulan dari tarikh milikan formal, jika itu dikira sebagai kesimpulan terhadap prosiding pengambilan tersebut, atau labih kurang dua tahun daripada tarikh pemakluman s 8 untuk memfailkan saman pemula untuk satu deklarasi. Selanjutnya, plaintif tidak sekalipun cuba untuk memberikan justifikasi atau penjelasan tentang kelewatan tersebut (lihat ms 678D, 677F–G).

(2) Jika satu tindakan untuk satu deklarasi boleh dibawa untuk mencabar prosedur pengambilan, ini bermakna bahawa pihak berkuasa yang mengambil tanah tersebut, sebelum ia boleh menggunakan tanah yang diambil tersebut, perlu untuk menghabiskan statut had masa. Ini tidak mungkin tujuan Akta itu. Oleh yang demikian, cabaran kepada prosedur pengambilan mestilah dibuat 'seberapa segera', dan hanya certiorari merupakan prosedur yang betul untuk berbuat demikian (lihat ms 679A–B).]

Notes

For cases on application for certiorari to quash award, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1312–1314.

For a case on application for certiorari to quash notice, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) para 1315.

Cases referred to

Goh Seng Peow & Sons Realty Sdn Bhd v The Collector of Land Revenue, Wilayah Persekutuan [1986] 2 MLJ 395 (refd)

Khor Cheng Wah v Sungai Way Leasing Sdn Bhd [1996] 1 MLJ 223 (refd)

A *Krishnan Moorthy P Manickam v Pengarah Tanah dan Galian Negeri Johor* [1996] 4 CLJ 233 (refd)
Lee Jean Khin & Ors v Pengarah Tanah dan Galian, Negeri Pulau Pinang (Penang High Court Civil Suit 21–6–91) (refd)
Oriental Rubber and Oil Palms Sdn Bhd v Pemungut Hasil Tanah, Kuantan [1983] 1 MLJ 315 (refd)
B *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Phaik* [1986] 1 MLJ 362 (refd)
Pemungut Hasil Tanah Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35 (refd)
Petaling Tin Bhd v Lee Kian Chan & Ors [1994] 1 MLJ 657 (refd)
C *R v London County, ex p Swan & Edgar (1927) Ltd* (1929) 141 LT 590 (refd)
Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v The Government of the State of Johore [1979] 1 MLJ 49 (refd)
Tan Boon Bak & Sons Ltd v Government of the State of Perak & Anor [1983] 1 MLJ 117 (refd)
D *Tan Oon & Ors, Re Application of; Tan Oon & Ors v Pemungut Hasil Tanah, Kuantan* [1985] 2 MLJ 67 (refd)
Teh Guan Teik v Inspector General of Police [1998] 3 MLJ 137 (refd)

Legislation referred to

E Land Acquisition Act 1960 ss 4, 8, 10, 68
Rules of the High Court 1980 O 5 r 1, O 15 r 16, O 53 rr 1A, 2(2)

Lim Kean Chye (*M Thayalan* with him) (*Thayalan & Associates*) for the plaintiff.

Alizatul Khair bte Osman Khairuddin (*Mohd Ruzima bin Ghazali* with her) F (State Legal Adviser's Office) for the defendant.

Cur Adv Vult

Jeffrey Tan J: This is the plaintiff's application for the following declaration and consequential orders:

G (1) Suatu deklarasi bahawa pengambilan tanah-tanah plaintif oleh defendan sebagaimana yang dinyatakan di dalam Jadual kepada Perisytiharan yang diterbitkan di dalam Warta Kerajaan Negeri Pulau Pinang Pemberitahuan No 61 pada 27 Mac 1997 adalah batal dan tidak sah setakat dan selagi ianya memberi kesan kepada pengambilan tanah-tanah plaintif.

H (2) Suatu perintah mengarahkan Pendaftar Hakmilik Negeri Pulau Pinang memberi kesan kepada deklarasi dan untuk mengeluarkan daripada rekod-rekod bersabit dengan tanah-tanah plaintif semua kemasukan pengambilan tanah-tanah yang tersebut di atas dan untuk mendaftarkan plaintif sebagai pemilik tanah-tanah tersebut.

I (3) Kos.

(4) Untuk relif-relif lain yang dianggap adil dan suaimanfaat oleh mahkamah yang mulia ini.

Prior to acquisition under the Land Acquisition Act 1960 ('the Act'), the plaintiff was the registered proprietor of lands held under Geran 43671, Geran Mukim 317 and Geran Mukim 318 for Lots 1475, 1476 and 1479, all in Mukim 15, Daerah Seberang Perai Selatan ('the said lands'). On 27 March 1997, the defendant published in the Gazette a declaration under s 8 of the Act to the effect that the whole of the said lands were needed for a public purpose. Then on 18 October 1997, after observance of provisions further to s 8, the land administrator took formal possession of the said lands by serving upon the plaintiff a notice in Form K.

The plaintiff contended, in the affidavit (encl 4) affirmed by its director (Lim Chor Huat), that the acquisition of the said lands was null and void, as the provisions of s 4 of the Act were not observed, whilst the defendant contended, in the affidavit affirmed by one Abdull Rashid bin Saad (encl 6), that s 4 'adalah tidak mandatori diikuti'. But that dispute is as yet to be argued, as the learned state legal adviser, Dato' Alizatul, raised a preliminary objection that s 68 of the Act barred 'the present action' seeking the said declaration and consequential orders. Incidentally, s 68 of the Act reads as follows:

> No suit shall be brought to set aside an award or apportionment under this Act.

On that preliminary objection, Mr Lim Kean Chye for the plaintiff answered that the plaintiff is not attacking the award or apportionment under the Act. 'We are attacking the entire proceedings'. 'No privative clause can deprive the court of its jurisdiction to quash illegal acts of the executive'. Mr Lim further contended that the acquisition, since s 4 was not observed, was void ab initio, and that the plaintiff is not 'caught by s 68'.

'Nevertheless', the learned state legal adviser responded, 'the indirect effect would be the setting aside of the award, and that is not allowed'. The declaration is to nullify the acquisition and is accordingly a challenge to the award. She added that s 68, 'a special provision peculiar to acquisition proceedings", does not oust the jurisdiction of the court by way of judicial review, but not by way of a suit. 'The remedy is certiorari'. The acquisition procedure was also challenged in *Pemungut Hasil Tanah v Kam Gin Phaik* [1986] 1 MLJ 362, but the Privy Council held that certiorari is the proper remedy.

Mr Lim and Mr Thayalan with him rejoined that the remedies of declaration and certiorari are available concurrently and are not mutually exclusive. Finally, submitting that s 68 is only confined 'to a suit against an award or compensation', Mr Lim said that the plaintiff is challenging the procedure adopted in the said acquisition under general principles of administrative law.

The word 'suit' in the Act is not statutorily defined. Neither is it judicially defined. In *Pemungut Hasil Tanah Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35, the Federal Court held, on the authority of *R v London County; ex p Swan & Edgar (1927) Ltd* (1929) 141 LT 590, 'that the word suit does not extend so as to include certiorari'. Agreeing with the Federal Court in *Ong Gaik Kee*, the Privy

Council held, in *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Phaik* [1986] 1 MLJ 362, 'that the word suit in s 68 did not include certiorari'. Both authorities did not say that the word 'suit' includes an action for a declaration.

But there are authorities suggesting that the word 'suit' does not include a declaration. In *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v The Government of the State of Johore* [1979] 1 MLJ 49, the Privy Council considered the appeal without reference to s 68, notwithstanding that the decision appealed against was the dismissal of a motion for a declaration that the proceedings for the acquisition of their lands were illegal and so null and void. Likewise, in *Krishnan Moorthy P Manickam v Pengarah Tanah dan Galian Negeri Johor* [1996] 4 CLJ 233, the court adjudicated on an originating summons for reliefs including a declaration without reference to s 68.

And there are authorities saying that the word 'suit' does not include a declaration. In *Goh Seng Peow & Sons Realty Sdn Bhd v The Collector of Land Revenue, Wilayah Persekutuan* [1986] 2 MLJ 395, where the applicant-company was not served with the necessary notices and documents relating to the acquisition of their land and only came to know of the acquisition proceedings after their right to apply for certiorari was already time-barred by O 53 r 1A of the Rules of the High Court, LC Vohrah J held that the court has a discretion to allow the applicant-company to proceed with its application for a declaratory relief 'in order to prevent injustice ... when the only procedure [certiorari] advocated by counsel for the respondent was rendered unavailable to the applicant-company through effluxion of time by the default of the respondent'. Still earlier, in *Tan Boon Bak & Sons Ltd v Government of the State of Perak & Anor* [1983] 1 MLJ 117 at p 119F, where the plaintiff sought a declaration that the acquisition proceedings are null and void and of no effect, Ajaib Singh J (as he then was) held, 'A writ will also lie if the provisions of the Land Acquisition Act have been abused or have not been complied with strictly'.

However, there is an unreported authority saying otherwise. In *Lee Jean Khin & Ors v Pengarah Tanah dan Galian, Negeri Pulau Pinang* (Penang High Court Civil Suit 21–6–91) the plaintiffs sought a declaration 'bahawa plaintif-plaintif berhak supaya baki tanah tersebut yang tidak digunakan dipulangkan kepada mereka kerana tujuan pengambilan telah luput dan cadangan untuk membangunkan tanah tersebut tidak dijalankan dalam lingkungan masa yang munasabah'. Agreeing with the defendant that s 68 was a bar to the plaintiffs' action, Abdul Hamid Mohamed J said, at p 6 of his judgment:

> Memanglah apa yang di pohon itu berbentuk deklarasi. Tetapi, adalah jelas bahawa, pertama tindakan sivil ini adalah satu 'suit'. Kedua, ia mempunyai kesan untuk mengenepikan award yang telah diberi kerana award yang telah diberi itu adalah berdasarkan keluasan tanah yang diambil. Jika mahkamah mengistiharkan plaintif-plaintiff berhak supaya baki tanah itu dipulangkan kepada plaintif-plaintif, ia akan mempunyai kesan terus kepada award itu. Plaintif-plaintiff tentu tidak patut menerima pampasan dari award untuk keseluruhan tanah itu dan juga mendapat balik sebahagian daripada tanah itu.

> Oleh itu, jika deklarasi diberi ia akan membawa kesan yang mengenepikan, atau, sekurang-kurangnya meminda award itu.

To his Lordship, 'adalah jelas', that suit for a declaration was a 'suit' within the meaning of the Act. Indeed, the word 'suit' is 'a generic term of comprehensive signification, referring to any proceeding by one person or persons against another or others in a court of law in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether in law or equity ... . It is however, seldom applied to a criminal prosecution' (*Black's Law Dictionary* (6th Ed)). And given that unmistakable meaning, the legislature could only have used the word 'suit' in the sense of civil proceedings. Then this originating summons for a declaration and consequential orders, which is a civil proceeding (O 5 r 1 of the Rules of the High Court 1980), could not, by reason of the provisions of s 68, be brought.

Mr Lim nimbly contended that the plaintiff is not attacking the award or apportionment under the Act, and that this originating summons attacking only the acquisition procedure is not a 'suit to set an award or apportionment under this Act.' With respect, this originating summons if successful would dismantle, or rather would efface the acquisition proceedings, and the award just as well, as the award, which is an integral part of the acquisition proceedings, could not stand on its own, or else the acquiring authority would have to pay an award even if the acquisition has been quashed or set aside. And surely that could not be so, as an award must go hand in hand with acquisition. With respect, this originating summons for a declaration and consequential orders, in substance and effect, is challenging the award under the Act.

But then as said, courts issue certiorari to set aside improper awards. And since courts issue certiorari, meaning that an award under the Act could be challenged in courts, could not courts also grant declaratory relief, which is after all, according to Mr Lim and Mr Thayalan citing the authorities of *Petaling Tin Bhd v Lee Kian Chan & Ors* [1994] 1 MLJ 657 and *Teh Guan Teik v Inspector General of Police* [1998] 3 MLJ 137, a concurrent remedy?

In *Petaling Tin Bhd v Lee Kian Chan* [1994] 1 MLJ 657, the trial court declined to exercise its discretion to grant the declarations (all related to the Code on Take-overs and Mergers 1981) sought by the appellant, on the ground, inter alia, that there is a more appropriate alternative available, like certiorari; the Federal Court held however that the only appropriate remedy available to the appellant, on the facts and in the circumstances of the case, was declaration. But pertinent even to the present case, the Federal Court per Edgar Joseph Jr FCJ said (at p 675D):

> ... even the availability of a prerogative order will not be a sufficient ground for the dismissal of declaratory proceedings. This was plainly indicated in *Pyx Granite Co v Ministry of Housing and Local Government* [1960] AC 260. There, Lord Goddard said, obiter (at p 290):
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> > 'I know of no authority for saying that if an order or decision can be attacked by certiorari the court is debarred from granting a declaration in

> an appropriate case. The remedies are not mutually exclusive, though no doubt there are some orders, notably convictions before justices, where the only appropriate remedy is certiorari.'

And in *Teh Guan Teik v Inspector General of Police & Anor* [1998] 3 MLJ 137, on the question 'what is the correct procedure for a police officer dismissed by a disciplinary body to challenge the decision, ie whether by way of declaration or certiorari or either', the Federal Court answered that certiorari and declaration are concurrent remedies. The Federal Court also held that the Court of Appeal ought not to have disposed of the appeal on the preliminary point of the procedure (applying for a declaration and not for an order of certiorari), but ought to have considered the merits of the appeal (see pp 143–144), as 'O 15 r 16 is statutory authority for a right to sue by declaration ... [and such right] shall not be open to objection even if no consequential relief is sought' (see p 147).

His Lordship Peh Swee Chin FJ said (at p 148D):

> To dislodge such a remedy by a declaration from its entrenched position would require clear and strong words from a statute. Thus some dictum in this connection bears repetition; it says: 'It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not be excluded except by clear words.' This was made by Viscount Simonds in *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC at p 286 who described the principle as a 'fundamental rule from which would not for my part, sanction any departure'.

At the same page (at para G), his Lordship informed that:

> Any random check of our law reports for practically every year since *Government of the Federation of Malaya v Surinder Singh Kanda* [1962] MLJ 169 and *Ridge v Baldwin* [1963] 2 All ER 66 will reveal cases of government servants seeking declarations that their dismissals were void in which no shadow of doubt has been cast on the propriety of seeking such a declaration instead of a certiorari.

And at p 150B–D, his Lordship observed:

> I would like to make a general observation before I end this judgment of mine, ie that a claim for a declaration is a very efficient remedy for an aggrieved citizen against ultra vires actions of all public authorities or governmental bodies. It has no coercive force by itself, inter alia, so that no governmental body need feel the threat of such force ... .
>
> If the private citizen was not to be allowed to circumvent the limitations of time for applying, etc of the certiorari by claiming for declarations instead, it would not be difficult to imagine how many such citizens could be, due to lack of expertise in the law of certiorari, barred from seeking justice and the court would have failed to live up to the image the public has, of being an institution of the people to serve the people in the interest of justice.

Clearly, certiorari and declaration are concurrent remedies and are not mutually exclusive. Yet, in the case of a challenge of the acquisition procedure, is this originating summons for declaratory relief to be heard? In *Petaling Tin Bhd v Lee Kian Chan* at p 674I, the Federal Court per Edgar Joseph Jr FCJ broadly stated the factors that courts have in the past

regarded as relevant when exercising their discretion as to whether to grant or refuse declaratory relief, as follows:

> Broadly stated, the court must weigh the advantages of granting declaratory relief as against the disadvantages. The minimum requirement must be to achieve justice between litigants and that is 'a subject on which experience may teach the courts of one generation to take what they may regard as a wider or more liberal view than that of their predecessors' (see *Brickfield Properties v Newton* [1971] 3 All ER 328).

Then in the present case, would justice be achieved, if this originating summons for a declaration were permitted to be brought? Already, albeit the bar in s 68 of the Act, certiorari proceedings can be brought. Thus, an aggrieved party is not without remedy, whilst the court is not deprived of jurisdiction to quash ultra vires acts of the acquiring authority.

Admittedly, time for applying for an order of certiorari is much more limited than time for applying for a declaration. But then, in acquisition proceedings, is not time of the essence?

In *Oriental Rubber and Oil Palms Sdn Bhd v Pemungut Hasil Tanah, Kuantan* [1983] 1 MLJ 315 where a delay of six years between the s 8 notification and s 10 inquiry was held to have had caused the s 8 notification to be exhausted and of no effect (and so held again by the same judge in *Re Application of Tan Oon & Ors; Tan Oon & Ors v Pemungut Hasil Tanah, Kuantan* [1985] 2 MLJ 67), VC George J (as he then was) said (at pp73F–74F):

> ... the effect of our s 10(2) of the Act is to emphasize the need for an early hearing date .... Once notification could cause hardship if the market price is to be at the date of the s 4 notification is in fact recognised by the Act .... I cannot but accept that in Malaysia, almost without exception, that there has been significant appreciation of land values between 1975 and 1980. ... I find as a fact the dilatory nature of the proceedings has acted so oppressively on the owners of the land as to make the compensation eventually awarded to them base on 1975 values to be of no value at all.

Indeed, Salleh Abbas CJ (Malaya) (as he then was) said, in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* where the Federal Court held that the seven years' delay between the s 8 notification and s 10 inquiry tantamount to an abuse of power and rendered the inquiry and subsequent proceedings null and void, at pp 37I–38C:

> It is true that s 10 of the Act does not prescribed the time within which the inquiry into the compensation must he held but looking at the Act as a whole no one could deny that the proceedings under the Act are meant to be in a continuous motion so that no such interruption or such undue delay or stoppage as to amount to an abandonment of the acquisition could be regarded as within this motion. Under s 38 of the Interpretation and General Clauses Ordinance, 1948 it is provided that:
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> > 'Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises.'

> What then is the convenient speed? In our view it must be 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'. Obviously what amounts to 'convenient speed' must vary from case to case ... .

Agreeing with Salleh Abbas CJ (Malaya) but observing nonetheless that the reference to abandonment of the acquisition by the acquiring authority may be misleading, the Privy Council in *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Phaik* applied the following principle to resolve whether delay had vitiated the award and rendered it null (at p 364C–D):

> The principle to be applied in resolving this issue is well settled. It was thus stated by Upjohn LJ as he then was, delivering the judgment of the Court of Appeal, *Simpsons Motor Sales (London) Ltd v Hendon Corp* [1963] Ch 57 at p 82:
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> > '... when a notice to treat has been served, it is the duty of the acquiring authority to proceed to acquire the land within a reasonable time. Mr Molony, for the corporation, argued that mere delay in proceeding to enforce the notice can never disentitle the acquiring authority from proceeding thereunder, but that some additional circumstance is necessary before the owner can object to the enforcement of the notice to treat against him. We do not accept this proposition. If the acquiring authority do not proceed within a reasonable time to acquire the property and pay the compensation, they may well lose their rights to enforce the notice. It would be most unreasonable to permit an acquiring authority, having given a notice to treat, to sit on their rights and defer enforcement of the notice until it suit them ... .'

Holding that the delay had the effect that the notice of the s 10 inquiry was given in contravention of statutory requirements and did not constitute a valid exercise of power, the Privy Council remarked that no attempt was made to justify or explain the delay.

Of course, there was no delay on the part of the acquiring authority in the instant acquisition. The s 8 declaration was published in the Gazette on 27 March 1997, the s 10 inquiry was completed on 10 July 1997, the award was made on 28 July 1997, and the Land Administrator took formal possession of the said lands on 18 October 1997. The delay was from the plaintiff who took about 18 months from the date of formal possession, if that is to be reckoned as the conclusion of the acquisition proceedings, or about 2 years from the date of the s 8 notification to file this originating summons for a declaration. And the plaintiff had not attempted even to justify or explain the delay.

On the point of delay in approaching the courts, the Court of Appeal per Gopal Sri Ram JCA said, in *Khor Cheng Wah v Sungai Way Leasing Sdn Bhd* [1996] 1 MLJ 223 at p 229D:

> It is a cardinal principle of law, that when a litigant seeks the intervention of the court in a matter that affects his rights, he must do so timeously. The maxim vigilantibus, non dormientibus, jura subveniunt, though having its origins in the Court of Chancery, is of universal application. Even in cases where a right is exercisable ex debito justitiae, a court may refuse relief to an indolent litigant.

In the case of a landowner affected by acquisition proceedings, a timeous application to the court is necessarily most imperative. The state authority may acquire land which is needed:

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or to any class of the public; or

(3) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

(Section 3 of the Act)

But whatever the purpose, it is not inconceivable that the land once acquired could be used almost immediately or reasonably soon thereafter for the declared purpose, especially if the purpose was of an exigent nature. Therefore, a landowner affected by acquisition proceedings must not delay in approaching the courts, or else courts could be asked not just to invalidate the acquisition but also to undo, in effect, subsequent disposal or use of the land, or dealing with the land, a scenario ever more likely with every delay.

On the other hand, an application for an order of certiorari, which must necessarily be made expeditiously (application for leave to be made within 6 weeks after the date the proceeding or such other period as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the court or judge to whom the application for leave is made — O 53 r 1A of the RHC, and application for the order of certiorari to be entered within 14 days after leave was granted — O 53 r 2(2) of the RHC), if successful, would not reasonably entail the undoing of any subsequent disposal or use of the land or dealing with the land, as an application for an order of certiorari, because it has to be made expeditiously after the conclusion of acquisition, would probably have been made before any subsequent disposal or use of the land or dealing with the land, and probably would have discouraged or dissuaded subsequent disposal or use of the land or dealing with the land until disposal of the challenge to the acquisition, unless it is to be believed that the acquiring authority would dispose or use or deal with the land nonetheless, regardless of the challenge to the acquisition.

On balance, the advantage of granting declaratory relief (allowing a landowner affected by acquisition to circumvent the limitations of time for applying for an order of certiorari) is far out-weighed by the disadvantage (invalidating an acquisition long after acquisition). After all, a landowner affected by acquisition even without recourse to declaratory relief is not exactly without means to overcome the limitations of time for applying for an order of certiorari. 'The court may extend the time if the delay is accounted for to the satisfaction of the court or judge' (*Mallal's Supreme Court Practice* (2nd Ed) para 53/1A/1). The court is still not ousted of its

jurisdiction to quash illegal acts of the acquiring authority. But justice would not be achieved, rather eschewed, if action for a declaration could be brought to challenge the acquisition procedure, for that would mean that the acquiring authority, before it could use the land acquired, would have to sit out the statute of limitations. And that could not have been the intention of the Act. A challenge to the acquisition procedure must be made 'as soon as possible', and certiorari is the [only] proper procedure.

For the reasons aforesaid, this originating summons is struck off with costs.

Summons struck off with cost.

Reported by Chin En Tek